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# Closed Custody for Juveniles: Comparisons between Canada and France

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*ABSTRACT*

In 1985 the maximum age for juveniles in Canada under the Young Offenders Act became 18. With the exception of Quebec and Manitoba, there will be a major increase in the number of juveniles handled by the juvenile justice system. Since more of these juveniles will be considered serious offenders, much concern has been expressed over the ability to institutionalize those juveniles seen as dangerous.

Has this concern been exaggerated? The authors raise the question of the necessity of using closed facilities as extensively as we have in the past. In France the juvenile justice system must deal with problems that are comparable in difficulty to those faced in Canada, yet the French use closed custody for juveniles less frequently than jurisdictions in North America. Comparisons will be made between juvenile justice in Creteil, on the periphery of Paris, and the province of Alberta. We will try to show how the French system makes extensive efforts to avoid the use of closed custody. The logic of the French judge differs from his North American counterpart in that closed custody is reserved for the commission of crimes but not for failure to comply with administrative decisions. By contrast North American judges use closed custody when juveniles do not comply with other rules or decisions.

The central question we ask is: As systems become more legalistic, juveniles theoretically have more protections, but will we also see a greater use of closed custody?

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It is somewhat unusual for a professor to coauthor a paper with a judge in another country and with civil servants in two different provincial departments. As one might anticipate, each author approaches the issues in a somewhat different manner. However, if one is sincerely interested in policy relevant research, interaction with people who have different perspectives is crucial. It is also important to note that the civil servants involved are not trying to argue for or against any government policy. They are simply adding their insights to a current topic of concern. Similarly, the senior people in the departments involved have been particularly helpful in furthering this discussion, not with any desire to present a particular policy for public consumption, but rather with the awareness that such a discussion provides helpful information which may contribute to more effective policies in the future.

Many people helped with this paper, but we especially would like to thank Bernie Doyle, Cecilie Lord, Malcolm Sallie Jr., Ray Therou, and Fred Komick of the Alberta Department of the Solicitor General and Bob Romito, Ken Schnell, and Kit Gillies of the Department of Social Services and Community Health. Any interpretations of data, however, are strictly the responsibility of the authors.

"Attempts to impede critical research in favour of public relations imagery help neither the public nor the agents of control, but contribute instead to the increasingly serious decline of both trust and effectiveness in relationships between and among governments and people."

--Austin T. Turk, preface to Ingrid Connidis, RETHINKING CRIMINAL JUSTICE RESEARCH: A SYSTEMS PERSPECTIVE, 1982.

## Introduction

**Potential changes under the Young Offenders Act.** On April 1, 1985, the uniform age requirement of the Young Offenders Act became law. The act required the provinces of Canada to treat juveniles charged with criminal offenses in a more legalistic manner. A major change for most provinces was to define Young Offenders as those law-breakers under the age of 18 and over the age of 12. Previously, the age of adulthood was 16 for most of Canada; only Quebec and Manitoba had an age limit of 18, and it was 17 in British Columbia and Newfoundland. This uniformity made the system more consistent, but it also meant that there would be a major increase in the number of young persons handled by the juvenile justice system.

Politicians, lawyers, academics, and professionals in juvenile corrections have all expressed concern over the ability of the provincial juvenile justice systems to provide the facilities necessary to handle this increase. Since older juveniles often include more serious offenders, there has been an assumption that these facilities must also be more secure.

Is this concern justified? Are the numbers of secure, locked facilities as necessary as North Americans have traditionally assumed? There are countries which do not think so. France, whose juvenile justice system must deal with problems of similar magnitude, locks up only a fraction of the number of juveniles compared to North American jurisdictions.

For example, in the province of Alberta, between July of 1981 and April of 1984, an average of 190 juveniles were forcibly detained in secure, locked facilities at any one time: 150 in compulsory care units and another 40 in detention centres, awaiting court appearances. By contrast, French jurisdictions serving similar numbers of juveniles had an average of only 10 juveniles locked up, and those for shorter periods of time.

We will try to show how the French system makes extensive efforts to avoid the use of closed custody. We also suggest that the logic of the French judge differs from his North American counterpart in that closed custody is rarely used and is reserved solely for the commission of crimes. It is not used for failure to comply with administrative decisions.

In this paper deficiencies in the French system are largely ignored, not because none exist, but because our purpose is to use the French system to gain perspective about Canada and the U.S. The data presented from Alberta probably reflect a legalistic approach to juvenile corrections, in keeping with trends that seem to prevail currently in North America. One can argue that this shift toward legalism represents the mood in the majority of jurisdictions in the United States as well.

Since we are most familiar with the workings of Alberta's juvenile justice system, we will focus on the way juvenile offenders were treated in that province between 1981 and 1984, and make comparisons with the way such juveniles are treated in France.

Canada's juvenile justice system is in transition, and over the next few years it will be closely scrutinized. Problems with the Young Offenders Act have already been targeted in the media, and judges in some provinces have been criticized for not following the spirit of the act. Canada has the rare opportunity to rethink its methods of dealing with juvenile offenders. Similarly, several states in the U.S. have in recent years been responding to juveniles with greater levels of control. By questioning the assumption that juvenile

offenders must be locked up, we hope some alternate ways of looking at juvenile corrections will evolve.

**The Difficulty of Comparing Statistics on Closed Custody**

We encounter some obstacles when we try to compare jurisdictional regions in France, called *departments*, with Canada's provincial jurisdictions. Because different systems use different methods for recording statistics, and different ways of defining a locked or closed facility, the number of forcibly detained juveniles can be hard to determine.

In France, it is very clear when a juvenile is locked up. Secure facilities mean a wing of an adult prison; other juveniles stay in completely open facilities which, in no way, can be construed as locked. In Alberta, as in much of North America, juvenile facilities have a range of security. Some of the facilities Albertans call "open" still have locked doors, and the consequences for leaving can be severe; a runaway juvenile can be sent to a more secure facility. This is never an option in the French system, as residences for juveniles do not have closed facilities. When the French judge finds a place for a juvenile it is not viewed as punishment. Not only are there minimal barriers to leaving a facility, the residence is usually the place where the juvenile wants to stay at that point in time.

**Comparing statistics in Alberta with selected jurisdictions in France.** In gathering statistics on Alberta we used conservative numbers and counted only those juveniles in compulsory care and detention facilities. We kept the statistics simple by counting the total number of juveniles in locked facilities on the last day of each month.

Other complications arise when we try to compare statistics in France and Alberta: Prior to 1985 the maximum legal age for juveniles in Alberta was 16. In France it was 18. A rough rule of thumb for comparing a jurisdiction with a legal age of 18 to one with a legal age of 16 is that approximately half of the juveniles charged with delinquency

FIGURE 1

Districts (departments) on the Periphery of Paris
and their Administrative Centers (prefectures)

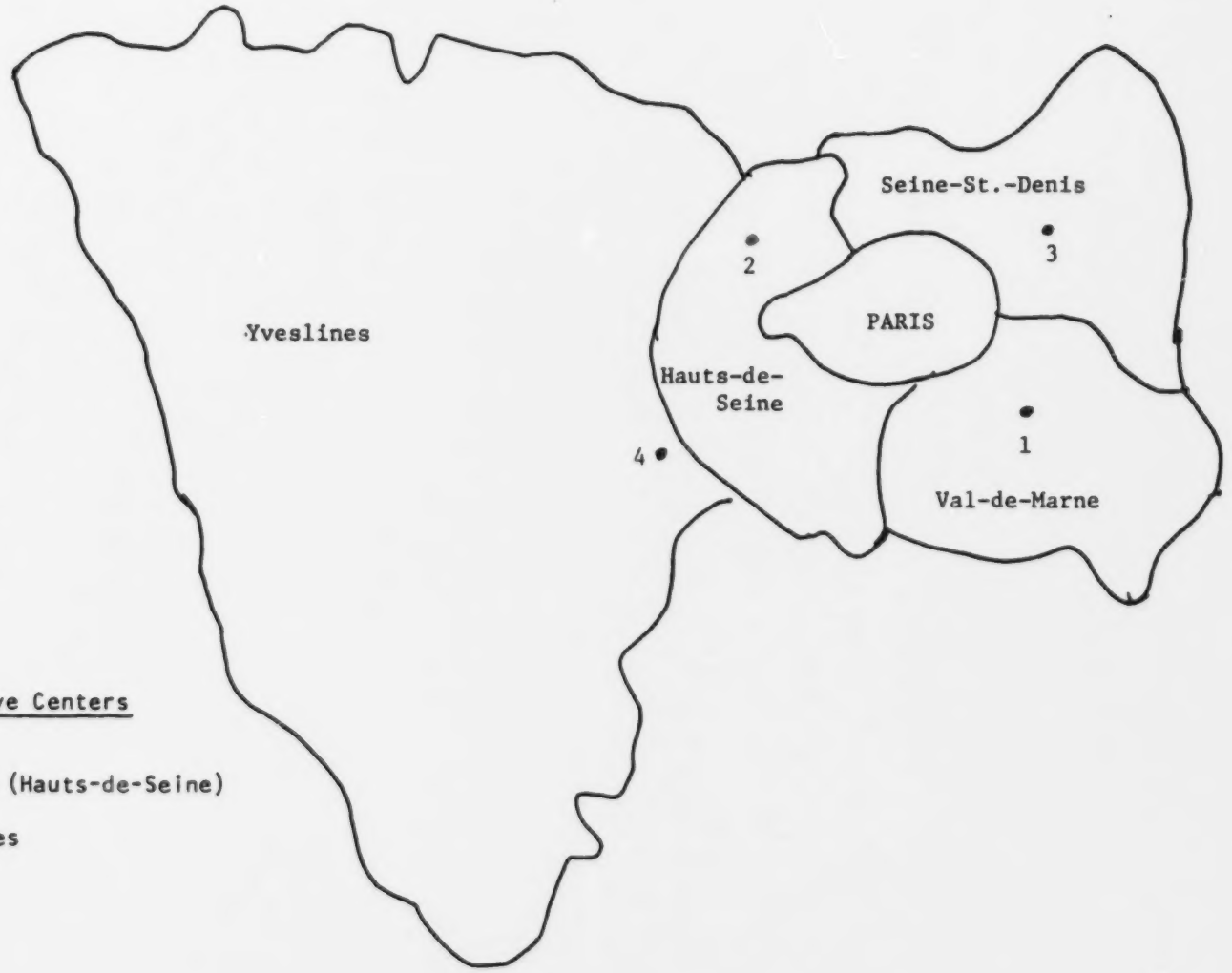

TABLE 1

Demographic and Social Characteristics of
Administrative Regions on the Periphery of Paris

| | Créteil (Val-de-Marne) | Bobigny (Seine-st-Denis) | Nanterre (Hauts-de Seine) | Paris | France |
|---|---|---|---|---|---|
| Total Population 1982 | 1,194,000 | 1,324,000 | 1,387,000 | 2,176,000 | ---- |
| Population aged 0-19 (1975) | 29.2% | 31.2% | 25.9% | 18.5% | 30.7% |
| Foreigners | 11.1% | 14.5% | 11.6% | 13.6% | 6.5% |
| Occupation: Percentage Professionals | 8.9% | 5.6% | 13.9% | ---- | ---- |
| Percentage Workers | 33.2% | 41.2% | 29.5% | ---- | ---- |

Source: Emsellem, 1982, p. 40 and Garioud, 1982, p. 124.

are 16 and 17 years of age. In other words, in two jurisdictions of similar size, the one with an 18 year old age limit probably processed twice as many juveniles as one with a 16 year old age limit. If we look at *departments* in France with roughly half Alberta's population, we should come up with roughly comparable statistics. The bureaucracies are also of similar size, though this will change as the Alberta system expands to accommodate 16 and 17 year olds.

Another way of adjusting for the different legal ages is to add the approximately 225 young persons, 16 and 17 years of age, held in Alberta's adult prisons, prior to the implementation of the Young Offenders Act, to the 190 juveniles held in locked facilities, and then compare the total numbers with a jurisdictional region in France with a similar population to Alberta's. This gives us approximately 415 juveniles locked up in Alberta, compared with approximately 10 locked up in Creteil, a *department* with 1,200,000 people.

Both methods admittedly produce crude comparisons, but the differences in the numbers of juveniles detained in locked facilities in the two countries were so disparate that the numbers are still meaningful even allowing for large errors.

We drew our statistics and other information on the French juvenile justice system from four *departments* on the periphery of Paris: Valde-Marne, Hauts-de-Seine, Yveslines, and SeineSaint-Denis. One of our authors is a judge at Creteil, the administrative centre for Val-deMarne, and therefore our most specific comparisons will be made with this jurisdiction. In 1982, these four *departments* had populations of between 1.1 and 1.4 million persons, roughly half Alberta's at that time. (See the map in figure 1.)

Val-de-Marne, to the southeast of Paris, and Hauts-de-Seine, to the west and southwest, both contained a mix of upper and lower class neighbourhoods, pocketed with industrialized areas; the delinquency rates of both *departments* corresponded to the national average, and each detained around 10 juveniles in prisons at any one time. The largely

Table 2

**Alberta Social Service Reports**

**Children Receiving Welfare Services by Type of Placement**

**Up to Age 18**

**March 31, 1983**

| | |
|---|---|
| Foster Homes | 3843 |
| Residential Resources | 459 |
| Contracted Group Homes | 385 |
| Government Group Homes | 202 |
| Compulsory Care | 156 |
| Detention | 43 |
| AWOL | 148 |
| Interim Placement | 191 |

Adapted from Alberta Social Services and Community Health Annual Report 1982-1983

rural *department* of Yveslines, west of Haute-deSeine, had a lower delinquency rate, with around 5 juveniles typically in custody.

Seine-Saint-Denis, to the east and northeast of Paris, was a rough, lower class area, having one of the highest delinquency rates in France; it usually held 25 juveniles in locked facilities. Table 1 shows some of the major differences between these *departments*. (For further comparisons see Girault, 1984; Emsellem, 1982; Garioud, 1982).

**Entering into Closed Custody in Alberta**

Prior to the Young Offenders Act, a juvenile in Alberta could end up in a closed facility through either delinquency legislation or through welfare legislation, dealing with endangered juveniles.

**The delinquency route to closed custody.** A police officer, on apprehending a juvenile suspected of committing a delinquency, could either issue a warning or lay charges. Charges required the juvenile to appear before a judge in family court. If the police suspected the juvenile might not honour the court appearance the juvenile could be held in a detention facility until the court date, which by law had to be held within 4 days of the arrest.

At the court hearing, a judge might release the juvenile, either by dismissing the charge because of a lack of prosecuting evidence or by finding the juvenile not guilty. Judges also commonly remanded cases to later trial dates so that police officers or social workers could investigate further, and again the juvenile could be held in a detention facility until the new court date.

If a juvenile were found guilty, a judge could invoke a variety of dispositions which did not necessarily institutionalize the juvenile, but which did require the juvenile to atone for his actions in some way and which carried the threat of harsher treatment if not fulfilled. Harsher treatment could mean having the juvenile placed in an institution,

using the disposition, "charge of province." The juvenile was then made a Temporary Ward of the province under the Juvenile Delinquents Act and sent to an open institution. If the juvenile was considered to be dangerous or a habitual offender, the judge could also issue a Compulsory Care Order and place the juvenile in a secure, locked institution. Technically, a Compulsory Care Order could be issued to a person up to the age of 18, but this was almost never done. In extreme circumstances, concerning a very serious crime, a juvenile's case would be waived to adult court, and the juvenile would be sentenced to serve time in an adult prison if found guilty. (See Table 2 for a breakdown of placements in Alberta in March, 1983.)

Judges took into account the recommendations of social workers and other professionals in making their decisions. However, some police officers and judges saw "a short stay in compulsory care for a child as an effective, short and quick punishment designed for 'shock' value (Taylor, 1982: p. 23)."

**The welfare route to closed custody.** In addition to delinquency legislation, child welfare legislation prior to 1984 provided another fairly easy route to closed custody. A social worker could apprehend a juvenile if the juvenile was in danger of harming himself or others, or if the juvenile was in danger of being harmed, either through direct assault or through neglect. Juveniles who were apprehended because they were suicidal or violent were usually held on an Emergency Compulsory Care Certificate, enabling authorities to hold them in a secure, locked facility for up to four days. Social workers sometimes used compulsory care as a quick way of getting a juvenile out of danger. Non-abusive juveniles were usually placed in open institutions or receiving homes. Receiving homes were the dwellings of private families who had agreed to provide short term care to children and juveniles on a per day basis for a set fee.

If, after further investigation, authorities decided the family home was detrimental to the welfare of the juvenile, a wardship hearing would be held in family court. A judge

could then make the juvenile a temporary or permanent ward of the province under the Child Welfare Act. These individuals were placed in foster homes, or in institutions which were not necessarily separate from institutions for juveniles made wards through the Juvenile Delinquents Act.

**Entering into Closed Custody in France**

When a juvenile is picked up for delinquency, the French police have several options, though laying charges is not one of them. They can simply record the circumstances and release the juvenile. Or the police can prepare the necessary forms and send the juvenile on to the *procureur*, who performs a role similar to our prosecutor. If charges are laid, it is done by the *procureur*, who also leads any investigation prior to laying charges. While awaiting the *procureur*, the police can hold a juvenile for 24 hours (48 hours in cases involving drugs), that is, one night in a police cell. In actual practice most cases go on to the *procureur* the same day. Occasionally, the police will contact a social worker directly, but this is uncommon.

The *procureur* can screen out the case or send it to the *juge des enfants*. Complicated cases or serious crimes go to the *juge d'instruction*, who conducts a more thorough investigation before the case is given to the juvenile court judge. While a *procureur* might recommend that a case be held in secure custody, only a *juge des enfants* or *juge d'instruction* can actually approve such a placement. When a juvenile is confined, it is in a juvenile wing of an adult prison until he can come before the *juge des enfants*. While this period of detention is usually very short, there is no confusion with rehabilitation. The incarceration figures *include* those held by the investigating judge awaiting trial. Normally juveniles being temporarily detained outnumber those who have been sentenced. Clearly, the opposite is the case in most of North America. The numbers do not include the one-night stays in police lock-ups, however. (A more complete discussion of the role of the French prosecutor, investigating judge, juvenile court judge, and social

worker is discussed in a separate paper. See Hackler and Garapon, 1985.)

The *juge des enfants* handles most cases. This judge can refer cases to a formal trial in court, but he deals with the vast majority informally in his office. If the judge does not use the formal trial, he cannot incarcerate a juvenile. Of course, he can detain the juvenile, just as Canadian judges have detained juveniles without a trial when the actual intent was to punish. However, the numbers detained suggest that such an abuse is relatively uncommon in France.

The judge can also assign a correctional social worker (an *educateur*) to supervise the juvenile; but, if the juvenile resists supervision, the judge cannot then place him in a closed institution or prison. The judge can have the police bring the child to his office, and he can use his symbolic position in a very persuasive way; but, unless the juvenile wishes to be "helped," little will be accomplished. When the judge decides not to use the formal court, little distinction is made between delinquency and welfare cases, and the emphasis turns to meeting the needs of the juvenile. Instead of handing down a decision, the judge is working out options and arranging for the variety of services.

It is important that whatever services are worked out, including a place for the juvenile to stay, have the support of the juvenile. Even though the judge has the power to remove a child from a family, the juvenile must want to live somewhere else. Being placed in a residential facility becomes a matter of negotiation rather than a "sentence." Usually the judge will engage the service of an *educateur*, who provides a variety of social work services, including making arrangements for juveniles to stay in residential facilities.

If the judge feels the case is serious, or if the child continues to offend, he refers the case to trial. In the formal courtroom, two lay judges sit with the *juge des enfants*, while the *procureur* and defense lawyer present their arguments. After a trial a juvenile can be sentenced to the juvenile wing of prison, usually for a maximum of a few weeks.

Unlike the juvenile court judge in Canada, the French judge is well informed in advance and plays the central role in working out arrangements. While the judge still has power, he is more of a social worker and negotiator when he deals with a juvenile in his office. Since the judge covers a specific geographical area, and families tend to remain in the same areas, the judge knows the cases in his area fairly well.

To summarize, the distinction between secure custody and residential centres is very clear. Custody is for punishment and sentences are uncommon and short. In fact, the majority of juveniles in the juvenile wing of prisons are usually in our equivalent of detention--being held while a judge is investigating the case. Frequently, a juvenile who was detained for a few weeks receives a sentence of identical length after appearing in court and is thus released. The point to be emphasized is that the number of juveniles in custody is remarkably small compared to Alberta.

Also, social workers can bring juveniles into residential care by referring them directly to a *juge des enfants* or by negotiating with the staff of a juvenile care facility. These placements, of course, require the cooperation of the juvenile. A social worker can never have a juvenile forcibly detained or confined. One does not "lock a juvenile up for his own good." There is a widespread belief that helping requires the cooperation of the juvenile. Persuasion is viewed as more important than power.

In the sections that follow we will see that there is also a major difference between France and Alberta with regard to residential facilities. The difference is not in physical arrangements, but rather in the attitudes towards the control of juveniles. This difference is particularly apparent when juveniles decide to leave a residence.

**Juvenile Treatment Facilities in Alberta**

Prior to the introduction of the Young Offenders Act, people tended to think of Alberta's juvenile treatment facilities as falling into one of three broad categories: closed

institutional settings, open institutional settings, and noninstitutional settings, such as group homes, foster homes, and receiving homes. Many facilities had both closed and open sections, and some administered non-institutional settings as well. A similar mixture of custody levels within institutions has continued after the implementation of the Young Offenders Act.

Juveniles placed in Alberta's institutions were often considered to be socially disadvantaged, exhibiting behaviours that worked to their detriment, and to be lacking the skills needed to take advantage of educational, employment, and social opportunities in the larger society. Treatment programs, aimed at changing those behaviours and at teaching the necessary life skills, were administered in the institutions by staff members trained in psychology, child care, social work, and recreational therapy.

Using formalized techniques in parenting, role modeling, and behaviour management, staff members interacted with the juveniles during the daily activities and routines of the institution. Staff ate their meals with juveniles, helped them with their chores and homework, and participated in recreational activities with them. Teaching, advising, counselling, and disciplining were all carried out within the milieu of the juveniles' daily living routines; formal teaching and counselling sessions existed as well.

Even though staff members thought of themselves as, and were considered to be "helping professionals" and "surrogate parents," both closed and open institutions, to varying degrees, had locked doors and windows. Staff members were responsible for keeping the juveniles in the institution. Institutionalized juveniles had the rights to a balanced diet, medical care, clothing, shelter, exercise, and education; while television, pool tables, later bed times, community outings, junk food, and cigarettes were considered privileges that were earned or kept by following the rules and behavioural expectations of the institution.

**Closed institutional settings.** Closed facilities were far more restrictive than were open facilities. Few privileges were given immediately on admission; most had to be earned. Staff members had to know the exact whereabouts of a juvenile at all times. Educational and recreational facilities were usually contained within the confines of the institution, and outdoor recreational areas were enclosed by high fences. Usually, a juvenile only left a closed institution for medical reasons or to attend court.

When a juvenile did escape or "run" it was treated as a serious event; warrants for arrest were often issued. If caught and returned to the institution, the juvenile was usually subject to increased supervision and to a total loss of privileges, which had to be earned back through showing a compliant, remorseful attitude and through compensating the staff and peers for the disruption of the daily routines, often through doing work duties such as scrubbing walls and floors. Running away might also lead to an extension of the juvenile's length of confinement.

Closed facilities were used for two main purposes: 1) the short term detention of juveniles to ensure their appearance in court, and 2) the longer term detention of those who had been issued a 30, 60, or 90 day Compulsory Care Order or Certificate. Often the same facility served both functions.

**Open institutional settings.** When a Compulsory Care Order expired, a juvenile often moved from a closed setting to an open setting, so the open setting was used as a reward for proper behaviour in the closed setting; one criterion judges used to decide whether to extend a juvenile's Compulsory Care Order an additional thirty days was a social worker's report on the juvenile's behaviour while in the closed facility.

The treatment approach in open facilities was an extension of that used in the closed facilities. Full freedom was not automatically returned once a juvenile moved from a closed to an open facility, or from the closed portion to the open portion of a facility.

Privileges still had to be earned, but more of them were granted immediately on admission to an open setting and were taken away only when a juvenile misbehaved. Open facility privileges centred more around earning the right to activities in the larger community and a progressive regaining of freedom.

Length of stay in an open institution was open-ended, typically dependent on behaviour, progress made with family therapy, the availability of non-institutional facilities, and the ability of a juvenile to live independently. An attempt was made to ease the transition back into the larger society; a juvenile's stay in an institution was not treated as a prison sentence by staff members, though some juveniles did view their stay as such.

Running from an open institution was not treated with the severity that it was from a closed institution but was still taken seriously. Staff members were required to stop juveniles from running, though in open institutions the juveniles usually ran from unsupervised or loosely supervised community outings, not from the confines of the institution itself. Those who ran from institutions were reported to the police and returned to the institution if apprehended. Juveniles who were returned were treated in a similar manner to that in closed settings, though the harshness of the treatment varied widely from institution to institution. Juveniles who returned of their own accord were treated more leniently. Juveniles who stayed away long enough, from two to fourteen days depending on the institution, were sometimes discharged because of the high demand on places for juveniles to stay.

**Non-institutional settings.** On leaving an open facility, many juveniles moved to non-institutional settings. Occasionally these included foster homes--the homes of private citizens who took in homeless children, and who were compensated by the provincial government for costs incurred in raising those children. Foster parents willing to take in juveniles, especially those with a delinquent history, were rare.

More commonly, a juvenile went to a group home. These facilities were usually located in middle-class neighbourhoods in houses indistinguishable from others in the community. Group homes tried to create a familial atmosphere. Juveniles spent much less time under the supervision of group home staff and much more time participating in, and using the services of, the larger community. Nor did this freedom first have to be earned, though it could be taken away for misbehaviours and then would have to be earned back. Juveniles in group homes had much more autonomy than juveniles in institutions and were expected to control their own behaviour.

Group homes provided flexibility for daily living routines. Because of the more active involvement in the larger community, each juvenile would follow more flexible routines. By contrast, in the institutions juveniles followed routines imposed by the institution. Misbehaviours, including running, and especially committing a delinquency, could result in the juvenile returning to an institutional facility. Running from a group home was handled in similar ways as from open facilities.

**Changes Brought about by New Legislation**

Since the introduction of Canada's Young Offenders Act and Alberta's new Child Welfare Act, Alberta's juvenile justice and child welfare systems have been in flux and transition. New procedures for handling juveniles have yet to stabilize. Both pieces of legislation include provisions which could help to bring about an eventual decrease in the numbers of juveniles held in locked facilities, but they also include provisions which, instead, could bring about an increase. If there eventually is a decrease, it will largely depend on professionals in the systems applying the legislation in the least restrictive ways; even then, it is unlikely that juvenile facilities in Alberta will ever be a casual as most residences in France. In the following discussion we refer only to facilities which are formally defined as "secure" or locked; yet, under the Young Offenders Act, many juveniles are sentenced to "open custody." However, such facilities have barbed-wire fences and

locked doors and are not "open" in the same way as French residential facilities. The essential difference between French and Canadian facilities lies primarily in the concern the authorities display over keeping the juvenile in the residence.

**The new Alberta Child Welfare Act.** The government of Alberta has published a pamphlet, "Intent of the Child Welfare Act," in which it states a number of goals it hopes to achieve with the legislation (Alberta Social Services and Community Health, 1985). Among these goals are, "An increased emphasis on less intrusive measures to provide services to children at risk and their families," and "A reduction in the placements of children in secure treatment institutions than were previously placed in compulsory care."

The term, "secure treatment," has replaced the designation, "compulsory care." The legislation is similar except that it now specifies that the secure treatment facility holding the child must provide services to "remedy or alleviate the disorder," (Bill 35, Chapter C-8.1, Child Welfare Act, 1984, Section 41(1)c. p. 24) for which the child was first brought into care. Previously, the child could be held solely to, "protect the survival, security or development of the child" (Bill 105, Child Welfare Act, 1983, Section 39(1)c., p. 20). Also, professionals empowered by the government to issue certificates confining children (and juveniles) can now be required to justify their decisions before a judge in family court. Both of these measures should lead to a decrease in the number of juveniles held in locked facilities.

Despite the *stated* goal of reducing the numbers of children held in locked facilities, some aspects of the new welfare legislation actually make it easier for a social worker to confine a child or juvenile. Under the old Child Welfare Act, a social worker could not place a child in a locked facility, even on an emergency basis, without first making the child a ward of the government, a fairly involved bureaucratic process. Once a child was made a government ward he could be placed in a locked facility with minimal difficulty. The new Child Welfare Act eliminates the need for a social worker to make the child a

ward of the government in order to confine the child. On the other hand, the process a social worker must follow in initially removing a child from its family is now slightly more difficult; such an action must now be approved by a judge or a justice of the peace.

We, and any future researchers, must also keep in mind the difficulties in measuring any *real* reduction in the number of juveniles held in locked facilities. The terminology the system uses for describing its facilities has changed, as have its methods for recording statistics. For example: under the new Child Welfare Act, juveniles are to be confined in locked facilities solely for mental health reasons, so they should be compared with juveniles who were held for similar reasons under the old Child Welfare Act; yet, a researcher cannot assume that if a juvenile was confined under the old Child Welfare Act it always was for similar reasons. A child might initially have been made a ward under the Child Welfare Act. However, if he later was confined for committing a delinquency, he would not then become a ward under the Juvenile Delinquents Act; he would remain a ward under the Child Welfare Act. Individual cases would have to be studied to get a true picture of the reasons for their confinement.

**The Young Offenders Act.** The government of Canada has published a handbook, "The Young Offenders Act Annotated," which gives explanations of the policy rationale (Bala and Lilles, 1982). "The principles set out in paragraphs 3(1)(f) and (h) of the Young Offenders Act declare that a young person has 'a right to the least possible interference with freedom that is consistent with the protection of society' and prescribe removal from parental supervision 'only when measures that provide for continuing parental supervision are inappropriate.' These principles indicate that custody is to be used as a last resort, only when the young person has committed a serious crime or when he presents a serious threat to the community" (p. 203).

It is important to keep in mind that, unlike the new Child Welfare Act, the Young Offenders Act does *not* have the goal of reducing numbers compared with previous legislation, but to keep the numbers as low as possible within the provisions of the Act itself. The major focus of the Young Offenders Act is to meet four objectives: to protect society; to protect the rights of young offenders; to make young offenders responsible and accountable for their actions; and to minister to the special needs of young offenders because of their still developing maturity, and in a way which meets any special problems they may also have, such as mental handicaps and psychological disorders.

Nonetheless, the act does contain provisions that could lead to a decrease in the numbers of juveniles locked up for committing criminal acts. Most of these provisions are either aimed at diverting juveniles from the formal court system or at keeping juveniles from being held in locked facilities while awaiting trial. Any real decrease, though, will ultimately depend on how authorities choose to apply the provisions.

Though the police under the Juvenile Delinquents Act could use their own discretion in screening juveniles out of the formal court system, the Young Offenders Act now officially sanctions this practice. Instead of charging juveniles or even bringing them before a judge or a justice of the peace, police can, instead, issue a warning and send the juvenile home.

The Young Offenders Act also provides another method of diverting juveniles from the formal court system. Instead of trying a juvenile, a prosecutor may initiate "alternative measures." The juvenile must admit to the crime, but instead of being tried for it, he enters into a contract in which he agrees to atone for his actions in some way. These include, "writing an essay, restitution, community service work, participation in a recreation program, involvement with Big Brothers/Big Sisters, or some form of counselling" (Bala and Lilles, 1982). If, however, the juvenile fails to fulfill the conditions of the agreement, he still can be tried for the crime.

"Alternative measures" seem to be the same as the diversion programs used in the United States but which are now less popular. It has been argued, both in the United States and Canada, that the most likely impact of diversion programs is to widen the social control net (Blomberg, 1981; Trepanier, 1981; Trepanier, 1983).

If "alternative measures" are not used, the Young Offenders Act has provisions for keeping juveniles from being locked up while awaiting trial. A juvenile must now appear before a judge or a justice of the peace before a police officer can have the juvenile held in a detention facility. Also, police must now make extensive efforts at contacting a juvenile's parents before confinement, and the act encourages releasing a charged juvenile to the care of a responsible adult. The act also makes it much easier for a juvenile to be released on bail, or even on his own recognizance.

The Young Offenders Act also has provisions which may, instead, increase the numbers of young persons held in secure, locked facilities. A juvenile serving a sentence in an "open custody" facility who "escapes or attempts to escape lawful custody or is, in the opinion of the director or his delegate, guilty of serious misconduct," (YOA, Section 24(9)) may be moved without judicial process to a locked facility for up to 15 days. The offending juvenile may also be subject to a judicial review or to new charges under the criminal code, either of which may lead to the juvenile receiving an increased sentence in a locked facility.

We have mentioned only a few of the more obvious ways in which the new acts may lead to either an increase or a decrease in the numbers of Alberta's juveniles detained in locked facilities. For example, a feature of the Young Offenders Act that differs markedly from the older Juvenile Delinquents Act is that juveniles are now sentenced to institutions, either closed or open custody, for fixed periods of time; previously, the length of stay was indeterminate. Whether this will have any effect on numbers is not obvious. Once the new system stabilizes, a researcher might investigate the average length of stay

for a juvenile in both the old system and the new system. Juvenile justice professionals have quoted the average length of stay for a delinquent juvenile under the Juvenile Delinquents Act as being anywhere from three months to one year, with a few juveniles living in institutions for many years; the Young Offenders Act allows sentences of up to three years, but what judges will eventually settle on as typical sentences is currently unknown. The Young Offenders Act, in particular, is a complex piece of legislation and it is not at all obvious how the provincial systems administering it will develop. If the past is any indication of the future, one would predict that there would be considerable diversity from province to province across Canada.

**Juvenile Treatment Facilities in France**

The French categorize their facilities very differently from Albertans. Since security is not an issue, it is not a criterion for classification. In Creteil, temporary versus long term care creates a distinction: *Centres d'accueils* are something like receiving centres in North America, where juveniles stay a relatively short time, and centres with *reorientation* in their title are longer term treatment centres.

Aside from the prisons, there are no closed residences for juveniles. Institutions, like Alberta's Youth Assessment Centres, which include psychologists, internal school systems and recreational facilities, and many professionals, do not seem to exist. Juveniles invariably use the resources of the larger community. They go to *outside* schools, psychologists, and the like. As one *educateur* said, "the idea is to keep them in the community."

Prior to the Second World War, France did have facilities, called *internats*, that resembled Alberta's institutions, but these have all been converted and no longer have any secure areas. France's present-day facilities--which we shall refer to by the general term, *foyer*, a word which translates roughly as "a place of welcoming"--can in no way be construed as locked or closed. There are many types of *foyers*, and many of them

resemble Alberta's group homes.

*Foyers* range from small group homes to the occasional larger facility of 80 or so beds. Buildings vary from ordinary homes to renovated mansions, small hospitals, and former institutions. Some are located in or close to the communities where the juveniles live; a few are in less populated areas. As in North America, a variety of private agencies and religious orders operate *foyers*. Therefore, a variety of strategies and philosophies influence each *foyer*. Each *juge des enfants* is responsible for overseeing several *foyers*, but judges theoretically can use any facility in France. In practice there are pressures to use facilities within the department because money follows placements.

Unlike Alberta, juveniles entering a *foyer* are not automatically considered to be socially disadvantaged. The compulsion to treat, which is so strong in North America, seems to be weaker in France. Help is available rather than required. Staying in a *foyer* can involve specialized care, but it often involves negotiations which include the wishes of the juvenile. Authorities feel juveniles must want to stay in a particular place to derive some benefit. The juvenile has to respect the rules and expectations to be allowed to *stay*. Staff in France probably have similar training, and think similarly to staff in North America, except there seems to be less emphasis on control. Like the judges, *foyer* staff rely on persuasion to a great deal.

In the Creteil area, with about half the population of Alberta, there are 6 *foyers* under the jurisdiction of the Ministry of Justice. These must accept emergency cases sent by the judge, but long term placements require negotiation between the judge and the social workers. There are also approximately 18 group homes funded by social services (D.A.S.S.). As in Canada, there are facilities operated by different ministries or different authorities, and a working relationship develops among those agencies, the judge, and the welfare facilities. Most of the *foyers* are operated by private agencies with funds provided by social services (D.A.S.S.). To give the reader a clearer image of the alternatives

available to the judge, we will describe several different settings.

**Secure facilities.** The prison at Bois d'Arcy (Maison d'Arret) holds approximately 1300 adults southwest of Paris. It has a small separate section for the 15 juveniles from the Nanterre jurisdiction and an additional 5 or so from the area administered at Versailles. The time spent in this institution is usually fairly short, a matter of weeks, and there is no pretense that this is a rehabilitative program. Most juveniles find the experience unpleasant.

**Centres for re-education.** The difference between prisons and *foyers* is dramatic. Reception centres (*foyers d'accueils*) are for temporary situations or when the juvenile's situation is unclear. Centres for orientation, observation, and re-education serve juveniles for longer periods of time. One such group home is the Centre for Observation and Re-education at Chevilly-Larue. In North America there is a tendency to separate delinquents and welfare cases, but in France one assumes that all juveniles are being helped. Thus, the distinction between delinquent and non-delinquent is not considered meaningful.

The Centre at Chevilly-Larue is run by a religious order and has room for 80 adolescents between 13 and 18. The buildings are located on 70 hectares, and the juveniles are housed in groups if 10; each of these units may develop a different philosophy, some being more permissive and others being more strict. The flexibility displayed in this large institution is apparent in that it also maintains an outside apartment in the town where a few of the older girls are learning to live on their own. In addition, two girls who were over 18 were working in the community. A juvenile court judge has the authority to continue help for juveniles for one year after the age of 18. In other words, the question was not with "release" from the *foyer*, but whether the girls could stay.

The *foyer* organizes contacts with groups in the community, but the initiative is to be taken by the juveniles themselves. For example, all physical education activities take place in the community with other youngsters. By North American standards there are few "programs" within the *foyer*. It is automatic that the juveniles will take part in the schools and other programs in the community. By the same token, the residence can provide a "home." If they are working, or even maintaining frequent contact with parents or relatives, they are not cut-off from the residence.

Within the *foyer* there are many similarities between Chevilly-Larue and facilities in Alberta. There is much staff interaction and the internal atmosphere is relaxed. The major difference seems to be in the consequences of disobeying rules or leaving. At Chevilly-Larue juveniles must follow certain rules in order to be allowed to stay. While North American institutions try to provide a *transition* back into the community, in France the intent is to *keep* him in the community. While a director of an institution in Alberta may need to return to court to "release" a juvenile, it is easier for the French juvenile to "go home."

Since Chevilly-Larue seemed rather relaxed for a *foyer* housing juveniles with severe problems, a concerted effort was made to visit *foyers* for serious delinquents in southern France. In the *department* of Bouches du Rhone, with a population of 1,800,000 people, we found that potentially dangerous girls were kept in the women's section of the prison at Marseilles (Baumette). At that time only one girl was confined.

For those not confined, the situation changed dramatically. In a *foyer* for girls with serious problems, 40 girls lived in the building, but 15 others lived in apartments nearby. All attended schools or worked outside the *foyer*. Each girl had a key to the lock on her room, but the staff did not have keys to those rooms. A bicycle trip, being organized by a staff member, did not include taking a formal count. Girls who went their own way created no concern. Attempts to create an atmosphere of a typical boarding school seemed

to be effective. The philosophy of persuasion rather than control was readily apparent.

**Foyers for short term care.** Although there are distinctions in terms of long and short care, there is much variety in the types of *foyers*. Judges and social workers have many choices, but some residences will resist taking some troublesome juveniles. A small *foyer* for temporary care illustrates the difference in logic between France and North America. A 14 year old girl was in conflict with her mother, who wanted her to continue in school. The girl wished to take a course in hair styling. The stepfather was sympathetic toward the girl, but felt that he should not interfere. The girl ran away from home and, although the judge made arrangements for the girl to stay in the *foyer*, the judge and the social workers were trying to get the girl to go back home and go along with the mother to a greater degree. If the girl were 16, the judge may have been more sympathetic to the girl being on her own, but at age 14, both social worker and judge were encouraging a family reconciliation.

While we have similar situations in North America, there is more than just a subtle difference in philosophy. In North America we *put* juveniles in places where we think it will be good for them. Juveniles may go along with such a decision knowing that the system can use more punitive alternatives. In France, the juvenile frequently sees the judge as a source of help. For example, one young man who was over 18 and serving time in prison wrote to his former judge and asked for help. He was desperately confused and felt that his former judge and *educateur* understood his problems better than anyone else. The judge made arrangements for the former *educateur* to work with the juvenile until the age of 21. Such things can happen in North America as well, but juveniles have a different image of these services in France. Not many Canadian juveniles would ask that their period of probation be extended because of the help they were getting from the probation officers. In 1984, 62 boys and 81 girls over the age of 18 were being served by the juvenile court judges in the Creteil area. Although some of these cases may have been

very minor, they underlie the fact that the welfare role consumes the vast majority of the judges' time; and juveniles see them as a source of help--even when they are over 18.

Another child care centre with 8 beds illustrates the similarity between these *foyers* and normal homes. In July this *foyer* was planning to close down in August for the annual vacation and was busy finding places for the juveniles. Some would go home and others would go to various camps. Since many of these *foyers* are private agencies, as are the camps which operate during August, the Ministry of Social Services does not decide on actual placements. Instead it provides catalogues and lists of private camps and the *foyer* staff hustle on their own to work out individual arrangements. In the files at this *foyer* were many brochures describing not only camps, but also a variety of schools which offered programs during the year. The juveniles looked over these brochures with the counselor, not only planning for the summer camp, but also planning for the future. One school offered work in the woods. Others concentrated on teaching foreign languages, computers, and skiing. Some programs were in other countries. In other words, these juveniles were being treated as essentially "normal." The juveniles expressed their wishes in terms of the camps and schools they wished to attend, and the social workers had to deal with the administrators of such camps or schools, who were not always enthusiastic about receiving certain types of "clients." In Canada, it would be hard to imagine emptying the entire population of an institution and sending the juveniles off to a variety of summer camps.

**The Relationship between Authorities and Juveniles in France.**

When a juvenile leaves a *foyer* in France judges and social workers do not view it as a crime. It is a problem, an annoyance, and it may cause concern for a number of people, but issuing a warrant for the arrest of the juvenile is simply not one of the options (Syndicat de la Magistrature, 1979). When the judge is working from his office, and not using the courtroom, he does not have the power to incarcerate juveniles. Even if

the juvenile returns later for another offense, judges tend to be lenient. Without the courtroom, the still judge has considerable symbolic authority, and he can always have a juvenile brought in by the police, but most judges do not find these tactics profitable. Hence, they spend considerable time negotiating situations that seem reasonable to the juveniles.

The consequence of such a philosophy is that juveniles do not think of themselves as "fleeing" from a *foyer*. When juveniles flee from an institution in North America, there is pressure to steal automobiles, engage in theft, or other delinquent behavior, because the juvenile is "escaping." Such pressure is minimal in France. In fact, a juvenile who leaves a *foyer* sometimes seeks out "his" judge. Since judges are responsible for certain geographical areas, the juvenile has an established relationship with a single judge. In one case, a juvenile appeared at juvenile court asking to see his judge, but the judge was away for a few days. The boy talked with social workers, prosecutors, and others, but he wanted to tell his story to "his" judge and no one else. In North America, it is unlikely that many systems would respond to a runaway in such a tolerant manner, but in this situation, the prosecutor made arrangements for the boy to stay in another *foyer* for a few days until the judge returned.

**The role played by the juvenile in decisions in France.** The wording of the formal papers which French judges sign to place a juvenile in a *foyer* is similar to that used in North America. The juvenile is "required" to stay in the *foyer* as assigned. The actual practice, however, is different (Martaguet, 1983; Girault, 1983). A major difference between the French and the North American scene lies in the role played by the juvenile. The juvenile plays a much more active role in France and has more influence over his fate. Since the juvenile does not define himself as an inmate in a *foyer*, the relationship with *educateurs* in these group homes is different. Skeptical North Americans might argue that the social worker or the judge can always incarcerate the juvenile if he does not follow

the guidance provided by personnel at the group homes; but in fact, this cannot be done unless the juvenile commits another crime.

The importance of the judge as an ally was illustrated by the attitude of the juveniles when "their" judge visited Chevilly-Larue. All the judges, and many others in the community, received invitations to various programs, and the presence of the judge was proof to the juveniles that he cared. Since many of the judges do not attend these functions, it was a clear point of comparison among the juveniles staying in this *foyer*.

**Contrasts in philosophy between France and North America.** One of the features of the Young Offenders Act in Canada is to provide protection for the juvenile when he goes to court. It is not seen as proper for a judge or some other person in authority to talk with a juvenile without the presence of parents or relatives. We are currently concerned that a juvenile not have to face a judge, policeman, or someone else in authority without having an advocate, parent, lawyer, or someone else, at his side. By contrast, the French place considerable faith in the professionalism of judges and prosecutors and thus they possess a high degree of discretionary power (King and Petit, 1985/86).

In France, many of the appeals to a higher court are the result of the conflict between parents and juvenile where the judge has taken the side of the youth. A French judge sometimes *permits* a juvenile to stay in a *foyer* even though the parents may be opposed. In North America appeals from the juvenile court usually arise because the judge is trying to do something *to* the juvenile. While the judge in France can certainly punish juveniles, he is often seen as an ally and a source of aid. The new Canadian Young Offenders Act tries to protect the juvenile by being sure that a parent or someone else is present, but there is the danger that we are taking the conflict out of the hands of those most involved (Christie, 1977). Do juveniles become the pawns while adults take over the debates? Is it possible that juveniles would prefer to tell their story directly to someone with authority *without* the presence of a parent or a lawyer?

Perhaps Canada *needs* more protection for juveniles because we do more *to* juveniles. The French juvenile knows "his" judge can get tough, but most of the effort goes toward helping. Thus, the French juvenile has more to gain by actively participating with the judge in defining some sort of program.

**Comparing Custody in France and Alberta**

Many settings in which juveniles are held in North America are relatively benign, and many facilities attempt to create an atmosphere conducive to rehabilitation. We tend to confine juveniles in order to treat them. The tendency to "lock them up in order to help them" is not only a product of the institutions in North America, but a general theme that pervades society. It is natural for us to discipline children who do not follow rules, even when they have no voice in deciding on the rules. Thus, when a juvenile goes AWOL, even from a facility that is "open" it seems appropriate in North America to discipline and confine him.

The appropriateness of this action is not so self evident to those working in juvenile justice in France. Recently, most of their social workers, with the support of the majority of juvenile court judges, rejected the possibility of effective treatment during confinement. If the juvenile is not being punished he still retains considerable control over his own actions. A recent study in Alberta suggests that a majority of judges still stress treatment in custody, a philosophy that continues under the Young Offenders Act (Gabor, et al., 1985). This creates a dilemma, however, since the growing concern for custody in Alberta since the Young Offenders Act seems to cut down on interaction with staff members, a crucial aspect of therapy (Gabor,et al., 1985).

In France, with confinement being defined as repressive, it is used rarely and for relative short periods. In Creteil, for example, the 10 juveniles who are imprisoned tend to serve an average of 15 days rather than the longer periods which are more typical for

Alberta and for the rest of North America.

While this paper has concentrated on Alberta, with particular attention to the impact of the Young Offenders Act, we would argue that the State of Washington, and other jurisdictions in the United States, which have gone to a more legalistic model, will find larger numbers of juveniles in closed custody. Will this accomplish the goals intended by policy makers? Is France so different from North America that it can respond to delinquents in such a different fashion?

An English criminologist and French juvenile court judge have recently compared the English and French juvenile justice systems. They conclude that the French system's emphasis on control through socialization and paternalistic intervention is more desirable than the ritual humiliation and oppressive punishments which characterize the activities of the English juvenile courts. The French have "succeeded in constructing and maintaining a welfare-oriented system by sacrificing the most difficult youngsters to the prison cell and by allowing rampant paternalism to triumph over the principles of due process. In our view, these are prices worth paying for a policy which offers a flexible and non-punitive response for the vast majority of young offenders" (King and Petit, 1985/86: 26).

## Conclusion

In May 1985 the age limit for juveniles in Canada became 18. If provinces like Ontario, Alberta, and others with former age limits of 16 pursue the present philosophy, a great many more facilities for housing juveniles in closed settings will be required. But are they really necessary? Delinquency in France is not trivial, yet relatively few juveniles are placed in prison. The clear separation between punishment and help seems to have certain advantages.

The French may have given the nasty work to their police and prisons, leaving the juvenile court judge and social workers in a better position. There seem to be fewer

situations where confrontations are likely. Is the French youth, who must obey certain rules in order to be ***allowed to stay*** in a specific residence, in a better position to take advantage of the help being offered? Some juveniles exceed the limit of tolerance, and the response in France can be fairly severe, but until that point is reached there is considerable flexibility, a flexibility that seems to lessen some of the problems that create difficulties for North American systems.

Is it possible that we *create* problems when we define runaways from institutions as having committed a "crime?" Are we helping to socialize a criminal under-class in North America by placing juveniles in a position where failure to obey rules imposed on them is a crime? Perhaps Canada should take this opportunity to rethink it's response to juveniles during the next few years?

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